

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

IN THE MATTER OF: ) Docket No. CAA-05-2004 0026  
)  
Rose Acre Farms ) Consent Agreement and Final  
Seymour, IN ) Order  
)  
Respondent. )  
)  
\_\_\_\_\_ )

US ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V  
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CONSENT AGREEMENT AND FINAL ORDER

I. JURISDICTIONAL AUTHORITY

1. This is a civil administrative action instituted and settled pursuant to Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.34 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. Part 22.

2. Complainant, the Director of the Air and Radiation Division, United States Environmental Protection Agency, Region 5 (U.S. EPA), brings this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

3 The Respondent is Rose Acre Farms (RAF or Respondent), a corporation doing business in Indiana.

## II. REGULATORY BACKGROUND

4. Under Section 502 of the Act, 42 U.S.C. § 7761a, the Administrator of U.S. EPA promulgated the Part 70 permit program regulations that established requirements regarding the permitting of certain sources. The regulations were codified at 40 C.F.R. Part 70.

5. The regulation at 40 C.F.R. § 70.2 defines "major source" as any source that emits or has the potential to emit 100 or tons per year (TPY) or more of a single air pollutant or 10 TPY or more of a single hazardous air pollutant (HAP).

6. Section 502(a) of the Act, 42 U.S.C. § 7661a(a), states that it is unlawful for any person to operate a major source, as defined at 40 C.F.R. § 70.2, except in compliance with a permit issued by a permitting authority under Title V of the Act, 42 U.S.C. §§ 7661-7661(f).

7. Section 503(a) of the Act, 42 U.S.C. § 7661b(a), states that any source specified in Section 502(a), in this case a major source, shall become subject to a permit program and required to have a permit on the later of the following dates: (1) the effective date of a permit program applicable to the source; or (2) the date such source becomes a major source.

8. Section 503(c) of the Act, 42 U.S.C. § 7661b(c), states that no later than 12 months from the date on which the source becomes subject to an approved permit program, any person

required to have a permit shall submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted.

9. The Part 70 permit regulations, at 40 C.F.R. § 70.1(b), require that all major sources in Indiana have a permit to operate that assures compliance by the source with all applicable requirements of the Act.

10. The Part 70 permit regulations, at 40 C.F.R. § 70.5(a)(1), require all major sources in Indiana that are first-time applicants for a Title V permit to submit a complete Title V permit application within 12 months from the date the source becomes subject to the permit program

11 The Part 70 permit regulations, at 40 C.F.R. § 70.7(b), require that no Part 70 source may operate after the time that it is required to submit a timely and complete application under an approved permit program, except in compliance with a permit issued under a Part 70 program or if a timely and complete application for a Part 70 permit was submitted.

12 Section 326 of the Indiana Administrative Code (IAC), at 2-1-03(a), prohibits construction or modification of any source or facility without first applying for and obtaining a construction permit from the commissioner.

13. Section 326 IAC 2-1-04(a) prohibits operation of any

subject source or facility without first applying for and obtaining a permit to operate said source or facility from the commissioner of the Indiana Department of Environmental Management (IDEM).

14. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up to a total of \$220,000 for violations of the Part 70 permit regulations and the Indiana State Implementation Program (SIP) that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

### **III. STIPULATED FACTS**

15. RAF is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

16. RAF is a "major source," as defined in 40 C.F.R. § 70.2, in that it emits over 100 TPY of a single air pollutant, volatile organic compounds (VOC), or 10 TPY of a single HAP, n-hexane.

17. RAF owns and operates a soybean processing plant on Highway 258 in Seymour, Indiana (the Facility).

18. The Facility contains a soybean oil extraction process that includes tanks, dehullers, crackers, flakers, grinders, a solvent extraction system, a mineral oil scrubber (MOS), a dryer,

toaster/dryer cooler, evaporators, condensers, oil strippers, scrubbers, heaters, storage bins, and a cooling tower.

19. The solvent extraction system in the Facility uses hexane, a VOC, as the solvent in its process.

20 In a July 12, 1990, letter to the Indiana Department of Environmental Management (IDEM), RAF consultant Lambert Hamblin, along with the manufacturer of the solvent extraction system, Crown Iron Works Co., estimated VOC emissions for a facility with a capacity of 500 tons of soybean throughput per day (TSPD) to be 34 pounds per hour (lb/hr) or 150 TPY RAF was proposing to build such a facility

21. On November 11, 1990, IDEM issued RAF a permit to construct and operate a 600 TSPD facility. The permit was required to be renewed in five years, or on November 11, 1995.

22. RAF began initial operation of the aforementioned 600 TSPD facility in February of 1992.

23. On November 11, 1995, the Facility's operating permit expired.

24. U.S. EPA promulgated the final interim approval of the Indiana Part 70 program on November 14, 1995, and the program became effective on December 14, 1995.

25. RAF became subject to the Part 70 regulations on the effective date, December 14, 1995.

26. RAF failed to submit an application for the required

Part 70 Title V Permit until April 3, 2003.

27. In January of 2001, RAF installed an additional flaker and related conveying equipment in the Facility. This installation raised the production capacity of the Facility from 600 TSPD to 750 TSPD

28 RAF failed to apply for a construction permit for the installation of the flaker and related conveying equipment.

29. RAF failed to apply for an operating permit for the operation of the flaker and related conveying equipment.

30. RAF submitted the following data, showing actual annual average solvent loss and n-hexane loss, or actual annual average VOC or HAP emissions, respectively, for the years 1996 through 2001.

a) actual annual average VOC emissions for the RAF facility for those years was 189.4 TPY.

b) lowest annual VOC emission rate for those years was 148.1 TPY.

c) actual average annual n-hexane loss, or actual annual average HAP emissions, for those years was 117.4 TPY.

#### IV. Violations

31. Paragraphs 1 through 30 are incorporated herein by reference.

32. RAF's failure to apply for a Part 70 Title V Permit within 12 months of the Facility becoming subject to the requirement, December 14, 1995, constitutes a violation of

40 C.F.R. § 70.5(a)(1) and Section 503(c) of the Act, 52 U.S.C. § 7662b(c).

33. RAF's operation of a major source, as defined at 40 C.F.R. § 70.2, after the date that it was required to submit a timely and complete Title V permit application under an approved permit program constitutes a violation of Section 502(a) of the Act, 42 U.S.C. § 7661a(a), and 40 C.F.R. §§ 70.1(b) and 70.7(b).

34. RAF's construction of a source without first applying for and obtaining a construction permit from the commissioner of IDEM constitutes a violation of Section 326 of the Indiana Administrative Code (IAC), at 2-1-03(a).

35. RAF's operation of a new source without first applying for and obtaining from the commissioner of IDEM a permit to operate said source constitutes a violation of Section 326 IAC 2-1-04(a).

#### **V. TERMS OF SETTLEMENT**

36. The parties agree that settling this action is in the public interest, that the entry of this Consent Agreement and Final Order (CAFO) without the filing of a Complaint or engaging in further litigation is the most appropriate means of resolving this matter, and that the purpose of this CAFO is to ensure compliance with the Act, the Indiana SIP, and the terms of this CAFO,

NOW, THEREFORE, before the taking of any testimony upon the alleged violations, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

37. This settlement is pursuant to and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

38. Pursuant to Section 113(d) of the Act, 42 U.S.C § 7413(d), the Administrator and the Attorney General have jointly determined that this matter is appropriate for an administrative penalty action and have authorized U.S. EPA to include in this administrative penalty action violations that allegedly began more than 12 months prior to filing of this administrative action.

39. RAF admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations.

40. RAF consents to the issuance of this CAFO, the assessment of a civil penalty, and the performance of a Supplemental Environmental Project (SEP), as outlined in Section VII of this CAFO.

41. RAF consents to all of the conditions in this CAFO.

42. RAF waives its right to a hearing as provided at 40 C.F.R. § 22.15(c).

43. RAF waives its right to contest the allegations in this CAFO, and waives its right to appeal under Section 113(d) of the

Act, 42 U.S.C. § 7413(d).

44. RAF certifies that it is complying fully with the Part 70 Permit Regulations, Section 502 of the Act, 42 U.S.C. §7761a, and the Indiana SIP at its Soybean Processing Plant in Seymour, Indiana

45. This CAFO constitutes a settlement by U S. EPA of all claims for civil penalties pursuant to Section 113 of the Act, 42 U.S.C. §§ 7671g and 7413, for the violations alleged in Section IV of this CAFO. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of RAF arising from the violations alleged in this CAFO or liability related to violations of the Act. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by U.S. EPA, and it is the responsibility of RAF to comply with such laws and regulations.

46. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

47 Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

48. This CAFO shall become effective on the date it is filed with the Regional Hearing Clerk, Region 5.

49. "Parties" shall mean U.S. EPA and RAF.

**VI. CIVIL PENALTY**

50. Pursuant to Section 113(e) of the Act, 42 U.S.C. § 7413(e), in determining the amount of the penalty assessed, U.S. EPA took into account (in addition to such other factors as justice may require), the size of RAF's business, the economic impact of the penalty on RAF's business, RAF's full compliance history and good faith efforts to comply, the duration of the violations, payments by RAF of penalties previously assessed for the same violations, the economic benefit of noncompliance, and the seriousness of the violations. Based on an analysis of the above factors, including, RAF's cooperation, prompt return to compliance, and agreement to perform a SEP, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$28,225 (twenty-eight thousand two hundred and twenty-five dollars).

51. RAF must pay the \$28,225 civil penalty by cashier's or certified check payable to the "Treasurer, United States of America," in accordance with paragraphs 52 and 53 below, within thirty days (30) of the effective date of this CAFO.

52. RAF must send the check to:

U.S. Environmental Protection Agency  
Region 5  
P.O. Box 70753  
Chicago, Illinois 60673

53. A transmittal letter, stating the Respondent's name and complete address, the case docket number, and the billing document number must accompany the payment. RAF must write the case docket number and the billing document number on the face of the check. RAF must send copies of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Attn: Compliance Tracker, (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Joanna Glowacki, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3509

54 This civil penalty is not deductible for federal tax purposes.

55. If RAF does not timely pay the civil penalty, or any stipulated penalties due under paragraph 67, below, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under

Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

56. Interest will accrue on any overdue amount from the date payment was due at a rate established under 31 U.S.C. § 3717. RAF will pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. RAF will pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter

#### **VII. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

57. RAF has agreed to complete the following supplemental environment project (SEP):

Within **ten months** from the issuance of this CAFO, RAF will install five wet cyclone baghouses for the control of particulate matter emissions (PM) at its Seymour, Indiana soybean processing plant. Three of these wet cyclone baghouses will be installed to control PM from the soybean oil extraction building, one will be installed to control PM from the three existing cyclones in the bean preparation building, and one larger unit will be installed in the soybean loadout area to control PM from the unloading of

soybeans from trucks. RAF will provide a detailed Scope of Work outlining the steps it will take and milestones with dates for completing this SEP within thirty (30) days of the effective date of this CAFO. RAF shall operate the five wet cyclone baghouses for no less than five years from the initial startup date of the baghouses.

58. RAF must spend at least \$232,165 in the performance of this SEP.

59. RAF certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. RAF further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

60. RAF must maintain copies of the underlying research and data for all reports submitted to U.S. EPA according to this CAFO. RAF must provide the documentation of any underlying research and data to U.S. EPA within seven days of U.S. EPA's request for the information.

61. Every three months, RAF shall submit progress reports to U.S. EPA describing the status of the SEP requirements. The first report shall be due no later than three months from the effective date of the CAFO. RAF shall continue to submit progress reports until the SEP completion report, as required by

paragraph 62, is submitted.

62. RAF must submit a SEP completion report to U.S. EPA within 60 days of the commencement of operation of the five wet cyclone baghouses. This report must contain the following information:

- a. detailed description of the SEP as completed;
- b. description of any operating problems and the actions taken to correct the problems;
- c. itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. certification that RAF has completed the SEP in compliance with this CAFO, and
- e. description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible)

63. RAF must submit all notices and reports required by this CAFO by first class mail to:

Attn: Compliance Tracker (AE-17J)  
Air Enforcement and Compliance Assurance Branch  
Air and Radiation Division  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

64. In each report that RAF submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers

I certify that I am familiar with the information in this document and that, based on my inquiry of

those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

65. Following receipt of the SEP completion report described in paragraph 62 above, U S. EPA must notify RAF in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give RAF 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report, and U.S. EPA will seek stipulated penalties under paragraph 66.

66. If U.S. EPA exercises option b above, RAF may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of RAF's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give RAF a written decision of its objection. RAF will comply with any requirements that U.S. EPA imposes in its decision. If RAF does not complete the SEP as required by U.S. EPA's decision, RAF will pay stipulated penalties to the United States under paragraph 67 below.

67. If RAF violates any requirement of this CAFO relating to the SEP, RAF must pay stipulated penalties to the United

States as follows:

a. Except as provided in subparagraph b, below, if RAF did not complete the SEP satisfactorily according to this CAFO, RAF must pay a stipulated penalty of \$84,675.

b. If RAF did not complete the SEP satisfactorily, but U.S. EPA determines that RAF: (i) made good faith and timely efforts to complete the SEP; and (ii) certified, with supporting documents, that it spent at least 90 percent of the required amount on the SEP, as specified by paragraph 57, RAF will not be liable for any stipulated penalty.

c. If RAF satisfactorily completed the SEP, but spent less than 90 percent of the required amount on the SEP, RAF must pay a stipulated penalty between \$8,468 and \$84,675.

d. If RAF failed to submit timely the SEP completion report required by paragraph 62 above, RAF must pay a stipulated penalty of \$100 for each day after the report was due until it submits the report

e. If RAF failed to submit timely any other report required by paragraph 61 above, RAF must pay a stipulated penalty of \$100 for each day after the report was due until it submits the report.

68. U.S. EPA's determinations of whether RAF satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind RAF.

69. RAF must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. RAF will use the method of payment specified in paragraph 51, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

70. Any public statement that RAF makes referring to the

SEP must include the following language, "RAF undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against RAF for violations of the Part 70 Permit Regulations and the Indiana SIP at its Seymour, Indiana, facility "

71 If an event occurs that causes or may cause a delay in completing the SEP as required by this CAFO.

a. RAF must notify U S. EPA in writing within 10 days after learning of an event that caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), RAF's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. RAF must take all reasonable actions to avoid or minimize any delay. If RAF fails to notify U.S. EPA according to this paragraph, RAF will not receive an extension of time to complete the SEP

b. If the parties agree that circumstances beyond the control of RAF caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of RAF caused or may cause a delay in completing the SEP, U.S. EPA will notify RAF in writing of its decision and any delays in completing the SEP will not be excused

d. RAF has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

#### **VIII. General Provisions**

72. This CAFO settles U S. EPA's claims for civil

penalties for the violations alleged in Section IV of this CAFO.

73. Nothing in this CAFO restricts U.S. EPA's authority to seek RAF's compliance with the Act and other applicable laws and regulations.

74. This CAFO does not affect RAF's responsibility to comply with the Act and other applicable federal, state, and local laws and regulations.

75. This CAFO constitutes an "enforcement response" as that term is used in "U.S. EPA's Clean Air Act Stationary Source Civil Penalty Policy" to determine RAF's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

76. The terms of this CAFO bind RAF, and its successors, and assigns.

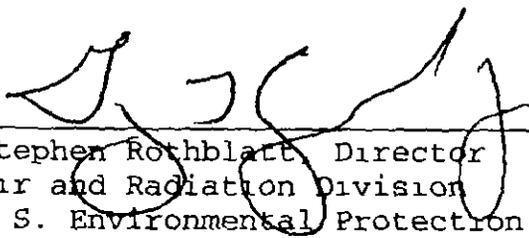
77. This CAFO constitutes the entire agreement between the parties.

78. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

79. Nothing in this CAFO is intended to nor shall be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this Agreement.

**U.S. Environmental Protection  
Agency, Complainant**

Date: 4/23/04

  
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ALJING  
Stephen Rothblatt, Director  
Air and Radiation Division  
U.S. Environmental Protection  
Agency, Region 5 (A-19J)

**CAA-05-2004 0026**

CONSENT AGREEMENT AND FINAL ORDER

RAF, Seymour Indiana

EPA Docket No.

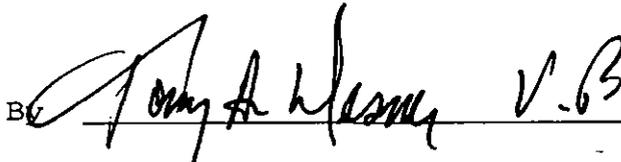
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Rose Acre Farms, Respondent

Date:

3-30-04

By

 V.B

Tony Wesner

Executive Vice President

CONSENT AGREEMENT AND FINAL ORDER

RAF, Seymour, Indiana

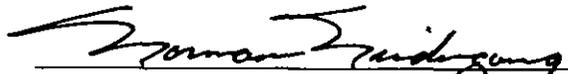
EPA Docket No.

CAA-05-2004 0026

Final Order

It is ordered as agreed to by the parties and as stated in the consent agreement, effective immediately upon filing of this CAFO with the Regional Hearing Clerk.

Dated. 4/26/04

  
Bharat Mathur  
Acting Regional Administrator  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

CERTIFICATE OF SERVICE

I, Loretta Shaffer, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CAA-05-2004 0026 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to RAF and RAF's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Alan Stout, Bean Plant Manager  
Rose Acre Farms  
P.O. Box 1250  
Seymour, Indiana 47274

Corinne R. Finnerty, Esquire  
McConnell and Finnerty  
38 North Fifth Street  
Post Office Box 90  
North Vernon, Indiana 47265

on the 28<sup>th</sup> day of April, 2004.

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
REGION V

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CLERK



Loretta Shaffer  
AECAS (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER 7001 0320 0004 1564 9273